THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 11832 of 2006

Date: 27-06-2006

Between:

V.Ganesh

..... PETITIONER

AND
Prohibition and Excise Superintendent,
R.R. District and others.

....RESPONDENTS

HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 11832 of 2006

O R D E R:

This writ petition is filed seeking a declaration that the action of the respondents in declaring the third respondent as successful bidder in respect of shop No.2 of Shameerpet in Ranga Reddy District in spite of the fact that the petitioner was the highest bidder is arbitrary and illegal.

It is not in dispute that in response to the notification dated 27-05-2006 issued under Rule 5 of the Andhra Pradesh Excise (Lease of Right of selling by shop and conditions licence) Rules, 2005, (for short 'the Rules') the petitioner and the third respondent herein submitted their bids in respect of shop No.2 of Shameerpet. The petitioner stated that whereas the tenders were supposed to be opened on 03-06-2006 at 10.30 A.M. as per the auction notice, the respondents could not complete finalisation of the tenders on the said day and the bidders were asked by the officials to come on 04.06.2006. However on 04.06.2006 when he met the respondents and enquired about the Shameerpet Shop No.2, he was informed that the tenders were already opened and the third respondent was declared as the highest bidder. Since the third respondent had admittedly offered Rs.10,00,000/-, whereas the petitioner claims to have quoted Rs.10,53,000/- the petitioner raised a protest. However, the respondents failed to consider the same. Hence, this writ petition.

Though notice has been served, the third respondent did not choose to appear. A detailed counter affidavit has been filed on behalf of the respondents 1 and 2 stating that on 03-06-2006 the sealed tender boxes were opened and the tenders were segregated. Though the process continued till 2.00 P.M., as there were large number of tenders for 390 shops, they could not finalise the tenders in respect of all the shops. Hence, the auctioning authority announced in the auction hall several times that the auction proceedings would be continued from 9.30 A.M. on 04-06-2006 i.e. the next day for remaining shops including the shop in question. Accordingly, on 04-06-2006, while considering the tenders in respect of the shop in question, the names of the tenderers were called in the auction hall and they were required to produce the earnest money deposit. The petitioner was not present in the auction hall in spite of several announcements made for his presence. Hence, the tender submitted by the petitioner was not taken into consideration and the remaining tenders were opened out of which the third respondent, who quoted Rs.10,00,000/-, was found to be the highest bidder and accordingly he was declared as the successful bidder.

It is to be noted that under sub rule (5) of Rule 14, it is mandatory that 10% of upset price fixed shall be deposited in the form of Demand Draft obtained from a scheduled bank before opening the tender. If the tenderer does not furnish earnest money, such tender shall be forthwith rejected by the auctioning authority.

The said rule reads as under:

> *"The tenderer, at the time of auction, shall be required to furnish as earnest money a sum equal to 10% of upset price fixed and notified by the auctioning authority for each shop notified for auction, in the form of demand draft(s) obtained from a scheduled bank in favour of auctioning authority or in favour of*

Commissioner of Prohibition and Excise, A.P. before opening the tender. If the tenderer does not furnish earnest money, such tender shall be forthwith rejected by the auctioning authority before opening the sealed tenders offered for that shop."

The specific case of the respondents that the petitioner was not present in the auction hall at the time of the finalisation of the tenders has not been disputed by the petitioner. Even according to the petitioner, he met the officials only after an hour. Thus, it is clear that the petitioner could not furnish the required earnest money deposit and therefore, the respondents had rightly rejected the tender of the petitioner.

In the counter affidavit it has been categorically stated that by the time the petitioner met the first respondent after an hour, the tenders were already finalized and the auction was confirmed in favour of the third respondent.

In the light of the unrebutted averments in the counter affidavit and keeping in view the mandatory provision under sub rule (5) of Rule 14 of the Rules, the procedure adopted by the respondents 1 and 2 cannot be held to be erroneous.

The writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

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G.ROHINI,J

Dated:27-06-2006
KLP